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[Your Name]
[Your Title]
[Your Company]
[Street Address, City, State ZIP]

May 14, 2026

[Opposing Counsel Name]
[Firm Name]
[Address]

Re: U.S. Patent No. 11760963 — Response to Assertion of Infringement

Dear Counsel,

We acknowledge receipt of your correspondence asserting infringement of U.S. Patent No. 11760963 (the "11760963 Patent"). After preliminary review, we have substantial concerns about the validity, enforceability, and scope of the asserted claims, summarized below. We reserve all rights and defenses.

1. Subject Patent — Summary

Patent Summary: US 11,760,963
Title: Ketogenic beer and alcoholic beverage mixture containing non-racemic ethyl 3-hydroxybutyrate and/or 1,3 butanediol
Assignee: Ketoneaid Inc.
Inventors: Frank Borges Llosa, Stephen Zarpas
Filing Date: October 23, 2018
Issue Date: September 19, 2023
Abstract:
A beverage can include D ethyl 3-hydroxybutyrate, D 1,3-butanediol, D Beta hydroxybutyrate salts, D Beta hydroxybutyrate/D 1,3-butanediol monoester, D ethyl hydroxybutyrate, hydroxybutyrate, and/or D hydroxybutyric acid of at least 0.5 percent by volume. The percentage of D ethyl 3-hydroxybutyrate, D 1,3-butanediol, D Beta hydroxybutyrate salts, D Beta hydroxybutyrate/D 1,3-butanediol monoester,…

2. Validity Concerns under 35 U.S.C. § 102 — Prior Art

We have identified prior-art references that, in our preliminary view, anticipate one or more asserted claims of the 11760963 Patent:

Analysis of Prior Art for US Patent 11,760,963
This analysis details the most relevant prior art cited against US Patent 11,760,963, focusing on potential anticipation of the patent's claims under 35 U.S.C. § 102. The core of the invention in the '963 patent is a beverage containing at least 0.5% by volume of D-1,3-butanediol, with substantially no L-1,3-butanediol, intended to support a ketogenic state.
Key Prior Art References:
The following patent documents were cited by the USPTO examiner during the prosecution of the '963 patent and are most relevant to the claimed invention.
1. US Patent Application Publication No. US 2003/0138384 A1
• Full Citation: US 2003/0138384 A1, "Methods of using a beverage composition," filed by The Procter & Gamble Co.
• Publication Date: July 24, 2003
• Brief Description: This patent application describes beverage compositions, including carbonated and non-carbonated soft drinks and juices, that are formulated to have a pH greater than 5.5 to reduce dental erosion. The document broadly discusses the inclusion of various functional ingredients…

3. Obviousness under 35 U.S.C. § 103

Independent of § 102, we believe the asserted claims are obvious in view of combinations of prior art that a person having ordinary skill in the art would have been motivated to combine:

Analysis of Obviousness under 35 U.S.C. § 103
This analysis evaluates whether the invention claimed in US Patent 11,760,963 would have been obvious to a "person having ordinary skill in the art" (PHOSITA) at the time the invention was made. An invention is considered obvious if the differences between the claimed invention and the prior art are such that the subject matter as a whole would have been obvious to a PHOSITA. This analysis relies on the prior art references identified in the preceding section.
A PHOSITA in this context would be a food scientist or biochemist with experience in formulating functional beverages and nutritional supplements, particularly those related to the ketogenic diet. This person would be familiar with ketone bodies, their metabolic precursors, and methods for creating palatable consumer beverages.
Obviousness of Independent Claim 1
Claim 1: A beverage comprising water and at least 0.5 percent by volume D-1,3-butanediol and no, or substantially no, L-1,3-butanediol, the beverage further optionally comprising one or more additives...
A strong…

4. Request

In light of the foregoing, we request that your client (i) provide a detailed claim chart identifying each accused product or service and mapping every limitation of each asserted claim, (ii) identify any prior art known to your client, including any references cited during prosecution or reexamination, and (iii) substantiate the basis for any damages or licensing demand. We are prepared to discuss the matter further once we have received and reviewed the foregoing.

Sincerely,

[Your Name]

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